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HOUSE BILL 505

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Richard P. Cheney

AN ACT

RELATING TO CRIMINAL LAW; REVISING THE ELEMENTS OF CRIMINAL
SEXUAL CONTACT OF A MINOR IN THE SECOND DEGREE; INCREASING
PENALTIES; PROVIDING CONFORMING AMENDMENTS; AMENDING SECTIONS
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-9-13 NMSA 1978 (being Laws 1975,
Chapter 109, Section 4, as amended) is amended to read:

"30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR. --

A. Criminal sexual contact of a minor is the
unlawful and intentional touching of or applying force to the
intimate parts of a minor or the unlawful and intentional
causing of a minor to touch one's intimate parts. For the
purposes of this section, "intimate parts" means the primary
genital area, groin, buttocks, anus or breast.

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1 B. Criminal sexual contact of a minor in the second
2 degree consists of all criminal sexual contact [~~of the~~
3 ~~unclothed intimate parts~~] of a minor perpetrated:

4 (1) on a child under thirteen years of age;
5 [~~or~~]

6 (2) on a child thirteen to eighteen years of
7 age when

8 ~~[(a) the perpetrator is in a position of~~
9 ~~authority over the child and uses that authority to coerce the~~
10 ~~child to submit;~~

11 ~~(b) the perpetrator uses force or~~
12 ~~coercion that results in personal injury to the child;~~

13 ~~(c) the perpetrator uses force or~~
14 ~~coercion and is aided or abetted by one or more persons; or~~

15 ~~(d) the perpetrator is armed with a~~
16 ~~deadly weapon] the perpetrator uses force or coercion; or~~

17 (3) on a child thirteen to eighteen years of
18 age when the perpetrator, who is a licensed school employee, an
19 unlicensed school employee, a school contract employee, a
20 school health service provider or a school volunteer, and who
21 is at least eighteen years of age and is at least four years
22 older than the child and not the spouse of that child, learns
23 while performing services in or for a school that the child is
24 a student in a school.

25 Whoever commits criminal sexual contact of a minor in the

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1 second degree is guilty of a second degree felony for a sexual
2 offense against a child and, notwithstanding the provisions of
3 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum
4 term of imprisonment of three years, which shall not be
5 suspended or deferred. The imposition of a minimum, mandatory
6 term of imprisonment pursuant to the provisions of this
7 subsection shall not be interpreted to preclude the imposition
8 of sentencing enhancements pursuant to the provisions of
9 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

10 ~~[C.—Criminal sexual contact of a minor in the third~~
11 ~~degree consists of all criminal sexual contact of a minor~~
12 ~~perpetrated:—~~

13 ~~(1) on a child under thirteen years of age; or~~

14 ~~(2) on a child thirteen to eighteen years of~~
15 ~~age when:—~~

16 ~~(a) the perpetrator is in a position of~~
17 ~~authority over the child and uses this authority to coerce the~~
18 ~~child to submit;—~~

19 ~~(b) the perpetrator uses force or~~
20 ~~coercion which results in personal injury to the child;—~~

21 ~~(c) the perpetrator uses force or~~
22 ~~coercion and is aided or abetted by one or more persons; or~~

23 ~~(d) the perpetrator is armed with a~~
24 ~~deadly weapon.—~~

25 ~~Whoever commits criminal sexual contact of a minor in the~~

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1 ~~third degree is guilty of a third degree felony for a sexual~~
2 ~~offense against a child.~~

3 ~~D. Criminal sexual contact of a minor in the fourth~~
4 ~~degree consists of all criminal sexual contact:~~

5 ~~(1) not defined in Subsection C of this~~
6 ~~section, of a child thirteen to eighteen years of age~~
7 ~~perpetrated with force or coercion; or~~

8 ~~(2) of a minor perpetrated on a child thirteen~~
9 ~~to eighteen years of age when the perpetrator, who is a~~
10 ~~licensed school employee, an unlicensed school employee, a~~
11 ~~school contract employee, a school health service provider or a~~
12 ~~school volunteer, and who is at least eighteen years of age and~~
13 ~~is at least four years older than the child and not the spouse~~
14 ~~of that child, learns while performing services in or for a~~
15 ~~school that the child is a student in a school.~~

16 ~~Whoever commits criminal sexual contact in the fourth~~
17 ~~degree is guilty of a fourth degree felony.]"~~

18 Section 2. Section 29-11A-3 NMSA 1978 (being Laws 1995,
19 Chapter 106, Section 3, as amended) is amended to read:

20 "29-11A-3. DEFINITIONS.--As used in the Sex Offender
21 Registration and Notification Act:

22 A. "sex offender" means a person eighteen years of
23 age or older who:

24 (1) is a resident of New Mexico who is
25 convicted of a sex offense in New Mexico;

. 154585. 1

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1 (2) changes his residence to New Mexico, when
2 that person has been convicted of a sex offense in another
3 state pursuant to state, federal or military law;

4 (3) is a resident of New Mexico who is
5 convicted of a sex offense pursuant to federal or military law;
6 or

7 (4) is a resident of another state and who has
8 been convicted of a sex offense pursuant to state, federal or
9 military law, but who is:

10 (a) employed full time or part time in
11 New Mexico for a period of time exceeding fourteen days or for
12 an aggregate period of time exceeding thirty days during any
13 calendar year; or

14 (b) enrolled on a full-time or part-time
15 basis in a private or public school in New Mexico, including a
16 secondary school, a trade school, a professional institution or
17 an institution of higher education; and

18 B. "sex offense" means:

19 (1) criminal sexual penetration in the first,
20 second, third or fourth degree, as provided in Section 30-9-11
21 NMSA 1978;

22 (2) criminal sexual contact in the fourth
23 degree, as provided in Section 30-9-12 NMSA 1978;

24 (3) criminal sexual contact of a minor in the
25 second [~~third or fourth~~] degree, as provided in Section

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1 30-9-13 NMSA 1978;

2 (4) sexual exploitation of children, as
3 provided in Section 30-6A-3 NMSA 1978;

4 (5) sexual exploitation of children by
5 prostitution, as provided in Section 30-6A-4 NMSA 1978;

6 (6) kidnapping, as provided in Section
7 30-4-1 NMSA 1978, when the victim is less than eighteen years
8 of age and the offender is not a parent of the victim;

9 (7) false imprisonment, as provided in Section
10 30-4-3 NMSA 1978, when the victim is less than eighteen years
11 of age and the offender is not a parent of the victim;

12 (8) solicitation to commit criminal sexual
13 contact of a minor in the second, third or fourth degree, as
14 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

15 (9) attempt to commit any of the sex offenses
16 set forth in Paragraphs (1) through (7) of this subsection, as
17 provided in Section 30-28-1 NMSA 1978. "

18 Section 3. Section 29-11A-5 NMSA 1978 (being Laws 1995,
19 Chapter 106, Section 5, as amended) is amended to read:

20 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
21 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
22 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

23 A. A county sheriff shall maintain a local registry
24 of sex offenders in ~~[his]~~ the sheriff's jurisdiction required
25 to register pursuant to the provisions of the Sex Offender

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1 Registration and Notification Act.

2 B. The county sheriff shall forward registration
3 information obtained from sex offenders to the department of
4 public safety. The initial registration information and any
5 new registration information subsequently obtained from a sex
6 offender shall be forwarded by the county sheriff no later than
7 ten working days after the information is obtained from a sex
8 offender. If the department of public safety receives
9 information regarding a sex offender from a governmental entity
10 other than a county sheriff, the department shall send that
11 information to the sheriff for the county in which the sex
12 offender resides.

13 C. The department of public safety shall maintain a
14 central registry of sex offenders required to register pursuant
15 to the provisions of the Sex Offender Registration and
16 Notification Act. The department shall participate in the
17 national sex offender registry administered by the United
18 States department of justice. The department shall send
19 conviction information and fingerprints for all sex offenders
20 registered in New Mexico to the national sex offender registry
21 administered by the United States department of justice and to
22 the federal bureau of investigation.

23 D. The department of public safety shall retain
24 registration information regarding sex offenders convicted for
25 the following sex offenses for a period of twenty years

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1 following the sex offender's conviction, release from prison or
2 release from probation or parole, whichever occurs later:

3 (1) criminal sexual penetration in the first
4 or second degree, as provided in Section 30-9-11 NMSA 1978;

5 (2) criminal sexual contact of a minor in the
6 second [~~or third~~] degree, as provided in Section 30-9-13 NMSA
7 1978;

8 (3) sexual exploitation of children, as
9 provided in Section 30-6A-3 NMSA 1978;

10 (4) kidnapping, as provided in Section 30-4-1
11 NMSA 1978, when the victim is less than eighteen years of age
12 and the offender is not a parent of the victim; or

13 (5) attempt to commit any of the sex offenses
14 set forth in Paragraphs (1) through (4) of this subsection, as
15 provided in Section 30-28-1 NMSA 1978.

16 E. The department of public safety shall retain
17 registration information regarding sex offenders convicted for
18 the following offenses for a period of ten years following the
19 sex offender's conviction, release from prison or release from
20 probation or parole, whichever occurs later:

21 (1) criminal sexual penetration in the third
22 or fourth degree, as provided in Section 30-9-11 NMSA 1978;

23 (2) criminal sexual contact in the fourth
24 degree, as provided in Section 30-9-12 NMSA 1978;

25 [~~(3) criminal sexual contact of a minor in the~~

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1 ~~fourth degree, as provided in Section 30-9-13 NMSA 1978;~~

2 ~~(4)~~ (3) sexual exploitation of children by
3 prostitution, as provided in Section 30-6A-4 NMSA 1978;

4 ~~(5)~~ (4) false imprisonment, as provided in
5 Section 30-4-3 NMSA 1978, when the victim is less than eighteen
6 years of age and the offender is not a parent of the victim;

7 ~~(6)~~ (5) solicitation to commit criminal
8 sexual contact of a minor in the second ~~[third or fourth]~~
9 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
10 or

11 ~~(7)~~ (6) attempt to commit any of the sex
12 offenses set forth in Paragraphs (1) through ~~(5)~~ (4) of this
13 subsection, as provided in Section 30-28-1 NMSA 1978.

14 F. The department of public safety shall adopt
15 rules necessary to carry out the provisions of the Sex Offender
16 Registration and Notification Act. "

17 Section 4. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,
18 Chapter 19, Section 8, as amended) is amended to read:

19 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
20 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
21 NOTIFICATION--INTERNET WEB SITE.--

22 A. If a sex offender is convicted of one of the
23 following sex offenses, the county sheriff shall forward
24 registration information obtained from the sex offender to the
25 district attorney for the judicial district in which the sex

. 154585. 1

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1 offender resides and, if the sex offender is a resident of a
2 municipality, the chief law enforcement officer for the
3 municipality in which the sex offender resides:

4 (1) criminal sexual penetration in the first
5 or second degree, as provided in Section 30-9-11 NMSA 1978;

6 (2) criminal sexual contact of a minor in the
7 second [~~third or fourth~~] degree, as provided in Section 30-9-13
8 NMSA 1978;

9 (3) sexual exploitation of children, as
10 provided in Section 30-6A-3 NMSA 1978;

11 (4) sexual exploitation of children by
12 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

13 (5) attempt to commit any of the sex offenses
14 set forth in Paragraphs (1) through (4) of this subsection, as
15 provided in Section 30-28-1 NMSA 1978.

16 B. A person who wants to obtain registration
17 information regarding sex offenders described in Subsection A
18 of this section may request that information from the:

19 (1) sheriff for the county in which the sex
20 offenders reside;

21 (2) chief law enforcement officer for the
22 municipality in which the sex offenders reside;

23 (3) district attorney for the judicial
24 district in which the sex offenders reside; or

25 (4) secretary of public safety.

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1 C. Upon receiving a request for registration
2 information regarding sex offenders described in Subsection A
3 of this section, the county sheriff, chief municipal law
4 enforcement officer, district attorney or secretary of public
5 safety shall provide that registration information, with the
6 exception of a sex offender's social security number, within a
7 reasonable period of time, and no later than seven days after
8 receiving the request.

9 D. Within seven days of receiving registration
10 information from a sex offender described in Subsection A of
11 this section, the county sheriff shall contact every licensed
12 daycare center, elementary school, middle school and high
13 school within a one-mile radius of the sex offender's residence
14 and provide them with the sex offender's registration
15 information, with the exception of the sex offender's social
16 security number.

17 E. The department of public safety may establish
18 and manage an internet web site that provides the public with
19 registration information regarding sex offenders described in
20 Subsection A of this section. The registration information
21 provided to the public pursuant to this subsection shall not
22 include a sex offender's social security number or a sex
23 offender's place of employment, unless the sex offender's
24 employment requires him to have direct contact with children."

25 Section 5. Section 31-20-5.2 NMSA 1978 (being Laws 2003
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1 (1st S.S.), Chapter 1, Section 7) is amended to read:

2 "31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS AND
3 CONDITIONS OF PROBATION.--

4 A. When a district court defers imposition of a
5 sentence for a sex offender, or suspends all or any portion of
6 a sentence for a sex offender, the district court shall include
7 a provision in the judgment and sentence that specifically
8 requires the sex offender to serve an indeterminate period of
9 supervised probation for a period of not less than five years
10 and not in excess of twenty years. A sex offender's period of
11 supervised probation may be for a period of less than twenty
12 years if, at a review hearing provided for in Subsection B of
13 this section, the state is unable to prove that the sex
14 offender should remain on probation. Prior to placing a sex
15 offender on probation, the district court shall conduct a
16 hearing to determine the terms and conditions of supervised
17 probation for the sex offender. The district court may
18 consider any relevant factors, including:

19 (1) the nature and circumstances of the
20 offense for which the sex offender was convicted or
21 adjudicated;

22 (2) the nature and circumstances of a prior
23 sex offense committed by the sex offender;

24 (3) rehabilitation efforts engaged in by the
25 sex offender, including participation in treatment programs

. 154585. 1

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1 while incarcerated or elsewhere;

2 (4) the danger to the community posed by the
3 sex offender; and

4 (5) a risk and needs assessment regarding the
5 sex offender, developed by the sex offender management board of
6 the New Mexico sentencing commission or another appropriate
7 entity, to be used by appropriate district court personnel.

8 B. A district court shall review the terms and
9 conditions of a sex offender's supervised probation at two and
10 one-half year intervals. When a sex offender has served the
11 initial five years of supervised probation, the district court
12 shall also review the duration of the sex offender's supervised
13 probation at two and one-half year intervals. When a sex
14 offender has served the initial five years of supervised
15 probation, at each review hearing the state shall bear the
16 burden of proving to a reasonable certainty that the sex
17 offender should remain on probation.

18 C. The district court may order a sex offender
19 placed on probation to abide by reasonable terms and conditions
20 of probation, including:

21 (1) being subject to intensive supervision by
22 a probation officer of the corrections department;

23 (2) participating in an outpatient or
24 inpatient sex offender treatment program;

25 (3) a probationary agreement by the sex

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1 offender not to use alcohol or drugs;

2 (4) a probationary agreement by the sex
3 offender not to have contact with certain persons or classes of
4 persons; and

5 (5) being subject to alcohol testing, drug
6 testing or polygraph examinations used to determine if the sex
7 offender is in compliance with the terms and conditions of his
8 probation.

9 D. The district court shall notify the sex
10 offender's counsel of record of an upcoming probation hearing
11 for a sex offender, and the sex offender's counsel of record
12 shall represent the sex offender at the probation hearing.
13 When a sex offender's counsel of record provides the court with
14 good cause that the counsel of record should not represent the
15 sex offender at the probation hearing and the sex offender is
16 subsequently unable to obtain counsel, the district court shall
17 notify the chief public defender of the upcoming probation
18 hearing and the chief public defender shall make representation
19 available to the sex offender at that hearing.

20 E. If the district court finds that a sex offender
21 has violated the terms and conditions of his probation, the
22 district court may revoke his probation or may order additional
23 terms and conditions of probation.

24 F. As used in this section, "sex offender" means a
25 person who is convicted of, pleads guilty to or pleads nolo

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1 contendere to any one of the following offenses:

2 (1) kidnapping, as provided in Section 30-4-1
3 NMSA 1978, when committed with intent to inflict a sexual
4 offense upon the victim;

5 (2) criminal sexual penetration in the first,
6 second or third degree, as provided in Section 30-9-11 NMSA
7 1978;

8 (3) criminal sexual contact of a minor in the
9 second [~~or third~~] degree, as provided in Section 30-9-13 NMSA
10 1978;

11 (4) sexual exploitation of children in the
12 second degree, as provided in Section 30-6A-3 NMSA 1978; or

13 (5) sexual exploitation of children by
14 prostitution in the first or second degree, as provided in
15 Section 30-6A-4 NMSA 1978. "

16 Section 6. Section 31-21-10.1 NMSA 1978 (being Laws 2003
17 (1st S.S.), Chapter 1, Section 9) is amended to read:

18 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
19 CONDITIONS OF PAROLE.--

20 A. If the district court sentences a sex offender
21 to a term of incarceration in a facility designated by the
22 corrections department, the district court shall include a
23 provision in the judgment and sentence that specifically
24 requires the sex offender to serve an indeterminate period of
25 supervised parole for a period of not less than five years and

. 154585. 1

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1 not in excess of twenty years. A sex offender's period of
2 supervised parole may be for a period of less than twenty years
3 if, at a review hearing provided for in Subsection B of this
4 section, the state is unable to prove that the sex offender
5 should remain on parole. Prior to placing a sex offender on
6 parole, the board shall conduct a hearing to determine the
7 terms and conditions of supervised parole for the sex offender.
8 The board may consider any relevant factors, including:

9 (1) the nature and circumstances of the
10 offense for which the sex offender was incarcerated;

11 (2) the nature and circumstances of a prior
12 sex offense committed by the sex offender;

13 (3) rehabilitation efforts engaged in by the
14 sex offender, including participation in treatment programs
15 while incarcerated or elsewhere;

16 (4) the danger to the community posed by the
17 sex offender; and

18 (5) a risk and needs assessment regarding the
19 sex offender, developed by the sex offender management board of
20 the New Mexico sentencing commission or another appropriate
21 entity, to be used by appropriate parole board personnel.

22 B. The board shall review the terms and conditions
23 of a sex offender's supervised parole at two and one-half year
24 intervals. When a sex offender has served the initial five
25 years of supervised parole, the board shall also review the

. 154585. 1

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1 duration of the sex offender's supervised parole at two and
2 one-half year intervals. When a sex offender has served the
3 initial five years of supervised parole, at each review hearing
4 the state shall bear the burden of proving to a reasonable
5 certainty that the sex offender should remain on parole.

6 C. The board may order a sex offender released on
7 parole to abide by reasonable terms and conditions of parole,
8 including:

9 (1) being subject to intensive supervision by
10 a parole officer of the corrections department;

11 (2) participating in an outpatient or
12 inpatient sex offender treatment program;

13 (3) a parole agreement by the sex offender not
14 to use alcohol or drugs;

15 (4) a parole agreement by the sex offender not
16 to have contact with certain persons or classes of persons; and

17 (5) being subject to alcohol testing, drug
18 testing or polygraph examinations used to determine if the sex
19 offender is in compliance with the terms and conditions of his
20 parole.

21 D. The board shall notify the chief public defender
22 of an upcoming parole hearing for a sex offender, and the chief
23 public defender shall make representation available to the sex
24 offender at the parole hearing.

25 E. If the board finds that a sex offender has

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1 violated the terms and conditions of his parole, the board may
2 revoke his parole or may order additional terms and conditions
3 of parole.

4 F. The provisions of this section shall apply to
5 all sex offenders, except geriatric, permanently incapacitated
6 and terminally ill inmates eligible for the medical and
7 geriatric parole program as provided by the Parole Board Act.

8 G. As used in this section, "sex offender" means a
9 person who is convicted of, pleads guilty to or pleads nolo
10 contendere to any one of the following offenses:

11 (1) kidnapping, as provided in Section 30-4-1
12 NMSA 1978, when committed with intent to inflict a sexual
13 offense upon the victim;

14 (2) criminal sexual penetration in the first,
15 second or third degree, as provided in Section 30-9-11 NMSA
16 1978;

17 (3) criminal sexual contact of a minor in the
18 second [or third] degree, as provided in Section 30-9-13 NMSA
19 1978;

20 (4) sexual exploitation of children in the
21 second degree, as provided in Section 30-6A-3 NMSA 1978; or

22 (5) sexual exploitation of children by
23 prostitution in the first or second degree, as provided in
24 Section 30-6A-4 NMSA 1978. "

25 Section 7. Section 33-2-34 NMSA 1978 (being Laws 1999,
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1 Chapter 238, Section 1, as amended) is amended to read:

2 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
3 DEDUCTIONS. --

4 A. To earn meritorious deductions, a prisoner
5 confined in a correctional facility designated by the
6 corrections department must be an active participant in
7 programs recommended for the prisoner by the classification
8 committee and approved by the warden. Meritorious deductions
9 shall not exceed the following amounts:

10 (1) for a prisoner confined for committing a
11 serious violent offense, up to a maximum of four days per month
12 of time served;

13 (2) for a prisoner confined for committing a
14 nonviolent offense, up to a maximum of thirty days per month of
15 time served;

16 (3) for a prisoner confined following
17 revocation of parole for the alleged commission of a new felony
18 offense or for absconding from parole, up to a maximum of four
19 days per month of time served during the parole term following
20 revocation; and

21 (4) for a prisoner confined following
22 revocation of parole for a reason other than the alleged
23 commission of a new felony offense or absconding from parole,
24 up to a maximum of eight days per month of time served during
25 the parole term following revocation.

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1 B. A prisoner may earn meritorious deductions upon
2 recommendation by the classification committee, based upon the
3 prisoner's active participation in approved programs and the
4 quality of the prisoner's participation in those approved
5 programs. A prisoner may not earn meritorious deductions
6 unless the recommendation of the classification committee is
7 approved by the warden.

8 C. If a prisoner's active participation in approved
9 programs is interrupted by a lockdown at a correctional
10 facility, [he] the prisoner may continue to be awarded
11 meritorious deductions at the rate [he] the prisoner was
12 earning meritorious deductions prior to the lockdown, unless
13 the warden determines that the prisoner's conduct contributed
14 to the initiation or continuance of the lockdown.

15 D. A prisoner confined in a correctional facility
16 designated by the corrections department is eligible for lump-
17 sum meritorious deductions as follows:

18 (1) for successfully completing an approved
19 vocational, substance abuse or mental health program, one
20 month; except when the prisoner has a demonstrable physical,
21 mental health or developmental disability that prevents the
22 prisoner from successfully earning a general education diploma,
23 in which case, the prisoner shall be awarded three months;

24 (2) for earning a general education diploma,
25 three months;

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1 (3) for earning an associate's degree, four
2 months;

3 (4) for earning a bachelor's degree, five
4 months;

5 (5) for earning a graduate qualification, five
6 months; and

7 (6) for engaging in a heroic act of saving
8 life or property, engaging in extraordinary conduct for the
9 benefit of the state or the public that is at great expense,
10 risk or effort on behalf of the ~~[inmate]~~ prisoner, or engaging
11 in extraordinary conduct far in excess of normal program
12 assignments that demonstrates the prisoner's commitment to
13 ~~[rehabilitate himself]~~ rehabilitation. The classification
14 committee and the warden may recommend the number of days to be
15 awarded in each case based upon the particular merits, but any
16 award shall be determined by the director of the adult
17 institutions division of the corrections department.

18 E. Lump-sum meritorious deductions, provided in
19 Paragraphs (1) through (6) of Subsection D of this section, may
20 be awarded in addition to the meritorious deductions provided
21 in Subsections A and B of this section. Lump-sum meritorious
22 deductions shall not exceed one year per award and shall not
23 exceed a total of one year for all lump-sum meritorious
24 deductions awarded in any consecutive twelve-month period.

25 F. A prisoner is not eligible to earn meritorious

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1 deductions if the prisoner:

2 (1) disobeys an order to perform labor,
3 pursuant to Section 33-8-4 NMSA 1978;

4 (2) is in disciplinary segregation;

5 (3) is within the first sixty days of receipt
6 by the corrections department; or

7 (4) is not an active participant in programs
8 recommended and approved for ~~[him]~~ the prisoner by the
9 classification committee.

10 G. The provisions of this section shall not be
11 interpreted as providing eligibility to earn meritorious
12 deductions from a sentence of life imprisonment or a sentence
13 of death.

14 H. The corrections department shall promulgate
15 rules to implement the provisions of this section, and the
16 rules shall be matters of public record. A concise summary of
17 the rules shall be provided to each prisoner, and each prisoner
18 shall receive a quarterly statement of the meritorious
19 deductions earned.

20 I. A New Mexico prisoner confined in a federal or
21 out-of-state correctional facility is eligible to earn
22 meritorious deductions for active participation in programs on
23 the basis of the prisoner's conduct and program reports
24 furnished by that facility to the corrections department. All
25 decisions regarding the award and forfeiture of meritorious

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1 deductions at such facility are subject to final approval by
2 the director of the adult institutions division of the
3 corrections department or the director's designee.

4 J. In order to be eligible for meritorious
5 deductions, a prisoner confined in a federal or out-of-state
6 correctional facility designated by the corrections department
7 must actively participate in programs that are available. If a
8 federal or out-of-state correctional facility does not have
9 programs available for a prisoner, the prisoner may be awarded
10 meritorious deductions at the rate the prisoner could have
11 earned meritorious deductions if the prisoner had actively
12 participated in programs.

13 K. A prisoner confined in a correctional facility
14 in New Mexico that is operated by a private company, pursuant
15 to a contract with the corrections department, is eligible to
16 earn meritorious deductions in the same manner as a prisoner
17 confined in state-run correctional facilities. All decisions
18 regarding the award or forfeiture of meritorious deductions at
19 such facilities are subject to final approval by the director
20 of the adult institutions division of the corrections
21 department or the director's designee.

22 L. As used in this section:

23 (1) "active participant" means a prisoner who
24 has begun, and is regularly engaged in, approved programs;

25 (2) "program" means work, vocational,

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1 educational, substance abuse and mental health programs,
2 approved by the classification committee, that contribute to a
3 prisoner's self-betterment through the development of personal
4 and occupational skills. "Program" does not include
5 recreational activities;

6 (3) "nonviolent offense" means any offense
7 other than a serious violent offense; and

8 (4) "serious violent offense" means:

9 (a) second degree murder, as provided in
10 Section 30-2-1 NMSA 1978;

11 (b) voluntary manslaughter, as provided
12 in Section 30-2-3 NMSA 1978;

13 (c) third degree aggravated battery, as
14 provided in Section 30-3-5 NMSA 1978;

15 (d) first degree kidnapping, as provided
16 in Section 30-4-1 NMSA 1978;

17 (e) first and second degree criminal
18 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

19 (f) second [and third] degree criminal
20 sexual contact of a minor, as provided in Section 30-9-13 NMSA
21 1978;

22 (g) first and second degree robbery, as
23 provided in Section 30-16-2 NMSA 1978;

24 (h) second degree aggravated arson, as
25 provided in Section 30-17-6 NMSA 1978;

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1 (i) shooting at a dwelling or occupied
2 building, as provided in Section 30-3-8 NMSA 1978;

3 (j) shooting at or from a motor vehicle,
4 as provided in Section 30-3-8 NMSA 1978;

5 (k) aggravated battery upon a peace
6 officer, as provided in Section 30-22-25 NMSA 1978;

7 (l) assault with intent to commit a
8 violent felony upon a peace officer, as provided in Section
9 30-22-23 NMSA 1978;

10 (m) aggravated assault upon a peace
11 officer, as provided in Section 30-22-22 NMSA 1978; and

12 (n) any of the following offenses, when
13 the nature of the offense and the resulting harm are such that
14 the court judges the crime to be a serious violent offense for
15 the purpose of this section: 1) involuntary manslaughter, as
16 provided in Section 30-2-3 NMSA 1978; 2) fourth degree
17 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
18 third degree assault with intent to commit a violent felony, as
19 provided in Section 30-3-3 NMSA 1978; 4) third and fourth
20 degree aggravated stalking, as provided in Section 30-3A-3.1
21 NMSA 1978; 5) second degree kidnapping, as provided in Section
22 30-4-1 NMSA 1978; 6) second degree abandonment of a child, as
23 provided in Section 30-6-1 NMSA 1978; 7) first, second and
24 third degree abuse of a child, as provided in Section 30-6-1
25 NMSA 1978; 8) third degree dangerous use of explosives, as

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1 provided in Section 30-7-5 NMSA 1978; 9) third and fourth
2 degree criminal sexual penetration, as provided in Section
3 30-9-11 NMSA 1978; [~~10) fourth degree criminal sexual contact~~
4 ~~of a minor, as provided in Section 30-9-13 NMSA 1978; 11)~~] 10)
5 third degree robbery, as provided in Section 30-16-2 NMSA 1978;
6 [~~12)~~] 11) third degree homicide by vehicle or great bodily
7 injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
8 and [~~13)~~] 12) battery upon a peace officer, as provided in
9 Section 30-22-24 NMSA 1978.

10 M Except for sex offenders, as provided in Section
11 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
12 correctional facility designated by the corrections department
13 who has been released from confinement and who is serving a
14 parole term may be awarded earned meritorious deductions of up
15 to thirty days per month upon recommendation of the parole
16 officer supervising the offender, with the final approval of
17 the adult parole board. The offender must be in compliance
18 with all the conditions of the offender's parole to be eligible
19 for earned meritorious deductions. The adult parole board may
20 remove earned meritorious deductions previously awarded if the
21 offender later fails to comply with the conditions of the
22 offender's parole. The corrections department and the adult
23 parole board shall promulgate rules to implement the provisions
24 of this subsection."

25 Section 8. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2005.

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